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10 Attorneys for Defendant  
11 Mark Garibaldi dba The Garibaldi Company

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EDITH MACIAS, individually and on behalf of similarly situated individuals; HOTON DURAN; TIFFANY HUYNH; AURA MENDIETA; WILLIAM LABOY; MIGUEL ACOSTA; CRUZ ACOSTA, CUAUHTEMOC TORAL; and TERESA VILLEGRAS, KAPIKA SALAMBUE and MARINA DURAN.

20 || Plaintiffs,

21 || vs.

22 THOMAS J. TOMANEK; and MARK  
23 GARIBALDI, individually and doing  
business as THE GARIBALDI  
COMPANY

Defendants.

Case No. C 07 3437 JSW

**DECLARATION OF CARL D. CIOCHON  
IN SUPPORT OF DEFENDANT  
GARIBALDI'S MOTION TO BE  
DECLARED PREVAILING PARTY AND  
FOR ATTORNEYS' FEES AND COSTS**

Date: March 14, 2008  
Time: 9:00 a.m.  
Courtroom: 2, 17th Floor  
Before: Hon. Jeffrey S. White

Action Filed: June 29, 2007

1           Carl D. Ciochon declares as follows:

2           1. I am an attorney licensed to practice law in California and admitted to practice  
3 before this Court. I am associated with the firm of Wendel, Rosen, Black & Dean LLP (“Wendel  
4 Rosen”), counsel of record for defendant Mark Garibaldi individually and doing business as The  
5 Garibaldi Company (“Garibaldi”). I make this Declaration in support of Garibaldi’s Motion to Be  
6 Declared Prevailing Party and for Attorneys’ Fees and Costs. I have personal knowledge of the  
7 matters set forth below, and if called to testify, would testify competently thereto.

8           2. I am the attorney at this firm with primary responsibility for this matter. I have  
9 over 10 years experience litigating complex civil cases in state and federal court. Before entering  
10 private practice, I clerked for the Hon. Richard M. Bilby of the United States District Court,  
11 District of Arizona. Prior to January 1, 2008, my normal hourly billing rate was \$325.

12           3. Through December 31, 2007, Wendel Rosen has billed Garibaldi a total of  
13 \$31,660.82 in connection with this action – \$28,060.50 for professional services rendered and  
14 \$3,600.32 in costs. These attorneys’ fees and costs are reasonable and were necessarily incurred  
15 in the defense of this action. They cover, among other activities, the drafting of two motions to  
16 dismiss pursuant to Rule 12(b)(6), the second of which was granted with prejudice, resulting in  
17 entry of Judgment in Garibaldi’s favor. Drafting these motions required substantial research and  
18 analysis of complex legal issues involving the RICO statute and federal mail fraud liability.

19           4. Attached as **Exhibit A** to this Declaration are true and correct copies of Wendel  
20 Rosen’s billing statements for services rendered in defense of this action through December 31,  
21 2007. Our time records are created and maintained using the CMS.Net Enhanced Time Entry  
22 software. I personally enter my time into the CMS system on a daily basis. We bill in minimum  
23 increments of .10 of an hour. As noted earlier, I have been the attorney with primary  
24 responsibility for this case. Charles Hansen, a partner in the firm, has also been involved. Prior  
25 to January 1, 2008, Mr. Hansen’s normal hourly billing rate was \$465. A junior associate, Kurt  
26 Wendlenner, was briefly involved at the inception of the engagement. Mr. Wendlenner’s normal  
27 hourly billing rate is \$225. Other personnel who have billed time include paralegal Franne L.  
28

1 Michaud (normal billing rate: \$140/hour) and case clerks Brian Martinez and Frances Regalado  
2 (normal billing rate: \$100/hour).

3        5. The billing statements attached hereto as Exhibit A identify the services rendered  
4 in the matter by each timekeeper. Certain entries have been redacted to prevent disclosure of  
5 attorney-client privileged information and attorney work-product. We are prepared to submit  
6 unredacted copies for *in-camera* review should the Court so require.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is  
8 true and correct and that this Declaration was executed in Oakland, California on January 23,  
9 2008.

/s/ *Carl D. Ciochon*

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